

# Notice

CC-2010-005

March 12, 2010

Designation for Litigation: Validity of  
Two-Year Deadline for Section  
6015(f) Claims Under Treas. Reg. Effective until further  
**Subject:** § 1.6015-5(b)(1) **Cancel Date:** notice

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## Purpose

The issue regarding the validity of the two-year deadline for filing a claim for relief under section 6015(f) was recently designated for litigation. In light of this action, this Notice provides direction for handling cases docketed with the Tax Court when the petitioner requested relief under section 6015(f) more than two years after the first collection activity. This Notice also amplifies and clarifies procedures announced in Chief Counsel Notice CC-2009-012 (April 17, 2009).

## Background

In Lantz v. Commissioner, 132 T.C. No. 8 (April 7, 2009), appeal docketed, No. 09-3345 (7th Cir. Sept. 17, 2009), the Tax Court struck down the two-year deadline for filing section 6015(f) claims, set forth in Treas. Reg. § 1.6015-5(b)(1), as an invalid interpretation of section 6015(f). Following the opinion in Lantz, Chief Counsel Notice CC-2009-012 provided interim guidance for Chief Counsel attorneys in handling cases in which the petitioner's claim for relief under section 6015(f) was untimely.

## Designation for Litigation

The issue of the validity of the two-year deadline in Treas. Reg. § 1.6015-5(b)(1) for filing a section 6015(f) claim was designated for litigation by the Office of Chief Counsel in order to handle consistently all cases involving this issue. As an issue designated for litigation, the Service will continue to deny claims for relief under section 6015(f) as untimely and will not settle or concede this issue. No administrative appeal of a section 6015(f) claim will be provided if the two-year rule issue is present, either in docketed or nondocketed status. Chief Counsel will not settle or concede the issue in any docketed

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case, although other issues may be settled or conceded (e.g., the merits of the section 6015(f) claim) depending on the facts of the case.

## **Procedures for Implementing the Designation for Litigation**

### **I. Newly Filed and Pending Administrative Claims**

If the Cincinnati Centralized Innocent Spouse Operations (CCISO) unit determines that a claim for relief was filed late, it will no longer issue a Preliminary Determination letter to the requesting spouse proposing to deny relief solely based on the two-year rule and providing instructions to request review by the Office of Appeals. Instead, CCISO will send the requesting spouse a Proposed Determination letter stating that the claim is untimely and offering two options: (1) that the requesting spouse may elect that the Service suspend consideration of the claim for relief, pending resolution of the validity of the two-year deadline issue in cases on appeal; or (2) that the requesting spouse may elect to receive a Final Determination letter, denying the claim based on the two-year deadline, which letter starts the 90-day period to file a petition with the Tax Court. The requesting spouse must elect option (1) in writing within 30 days from the date of the Proposed Determination letter. If the requesting spouse does not respond timely, CCISO will issue a Final Determination letter. Appeals will send the requesting spouse a similar letter in all cases pending in its inventory containing this issue giving the requesting spouse the same options and informing the requesting spouse that their case is being returned to CCISO for handling.

If the requesting spouse elects to have the Service suspend consideration of the claim for relief, the prohibition on collection from the requesting spouse will continue during the period of suspension and the requesting spouse's collection statute of limitations will also continue to be suspended. In addition, underpayment interest will continue to accrue on any amounts due for the tax years at issue. The requesting spouse may terminate the suspension at any time by notifying CCISO in writing and requesting a Final Determination or, if six months have passed since the requesting spouse filed the claim for relief, by petitioning the Tax Court without a Final Determination.

### **II. Cases Docketed in the Tax Court**

Chief Counsel attorneys will continue to argue in all cases (regular and "S" cases) that relief under section 6015(f) is unavailable whenever the petitioner's claim for relief under section 6015(f) was filed more than two years after the Service's first collection activity with respect to the petitioner. Attorneys must identify the two-year rule issue as soon as possible after the petition is filed and contact Branch 1 or 2 of Procedure and Administration at (202) 622-4910 or (202) 622-4940, respectively, to coordinate the action necessary for appropriate resolution of the issue and case. This requirement applies to cases both currently pending and those petitioned in the future.

If the Service has not considered the merits of the petitioner's claim for relief, then the Chief Counsel attorney must refer the case to CCISO for a determination on the merits. The request for CCISO to make a determination regarding the merits should be sent to the address below along with Form 3210, Document Transmittal:

IRS- CCISO  
Stop 840F  
P.O. Box 120053  
Attn: Department One Manager  
Covington, KY 41012-1424

If a private delivery service is used, the file should be sent to the following street address:

IRS- CCISO  
201 West Rivercenter Boulevard  
Stop 840F  
Attn: Department One Manager  
Covington, KY 41011

Requests should be marked "EXPEDITE-TAX COURT CASE PENDING" and include the Tax Court petition and any other relevant documents. The request should specify whether the petitioner is represented or pro se. If the petitioner is represented, the request should instruct CCISO not to communicate directly with the petitioner regarding the merits of the petitioner's claim. Instead, CCISO should be instructed to communicate exclusively with petitioner's counsel. Further, the request should instruct CCISO to provide the results of its consideration directly to Counsel and that CCISO should not issue a new determination letter.

In newly-docketed cases with this issue, the administrative file should be requested only after CCISO completes its determination on the merits. During the pendency of CCISO's determination, attorneys should request that CCISO telefax the claim for relief from joint and several liability (Form 8857) with all the attachments, along with the Final Notice of Determination that serves as the basis of the Tax Court's jurisdiction, so that a timely answer can be filed.

Questions regarding submission of requests for determinations and the status of requests can be made by telephoning CCISO at (866) 897- 4270 (Ext. 8147). If a case is on a trial calendar less than 60 days away, a Motion for Continuance may be appropriate in order to give the Service sufficient time to review the merits of the claim.

Cases presenting the issue of the validity of the two-year deadline may not be referred to the Office of Appeals for review of CCISO's determination. Attorneys should contact Appeals to retrieve cases with the issue that were previously referred to Appeals. Instead, the attorney should submit a status report to the Tax Court upon receiving

Questions concerning this Notice and how to proceed with a case presenting the issue of the validity of the two-year deadline should be directed to Branch 1 or 2 of Procedure and Administration at (202) 622-4910 or (202) 622-4940, respectively.

/s/  
Deborah A. Butler  
Associate Chief Counsel  
(Procedure and Administration)